

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 546 of 1989

with

SPECIAL CIVIL APPLICATION No 5267 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

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Versus

COLLECTOR OF GANDHINAGAR

Appearance:

1. Special Civil Application No. 546 of 1989
MR MIHIR H JOSHI for Petitioners No. 1-2
MR SP SEN ASSTT GOVERNMENT PLEADER for Respondents No. 1-2
 2. Special Civil Application No. 5267 of 1993
MR MIHIR H JOSHI for Petitioner No. 1
MR SP SEN ASSTT GOVERNMENT PLEADER for Respondent No. 1
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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 01/11/2001

ORAL JUDGEMENT

#. Heard Mr.Mihir H. Joshi, learned advocate appearing on behalf of the petitioners in these two petitions and Mr.S.P.Sen, learned AGP appearing on behalf of the respondents - State Authorities.

#. So far as Special Civil Application No.546 / 89 is concerned, RULE has been issued by this Court on 21st March, 1991 and interim relief has been granted in terms of Para-21[C] by this Court. Whereas, in Special Civil Application No.5267 / 1993, RULE has been issued by this Court on 22nd March, 1994 and interim relief in terms of Para-23[c] has been granted.

#. In both these petitions, common issues and contentions have been raised by Mr.Mihir Joshi, learned advocate for the petitioners and therefore, these two petitions are heard together and same are being disposed of by this common judgment.

#. The main cause arose for filing these two petitions is cancellation of the auction sale by the District Collector. According to the facts of these two petitions, pursuant to the auction sale which was held on 6th December, 1985 and thereafter, the proposal has been made by the Mamlatdar, Gandhinagar to the District Collector, Gandhinagar. However, the District Collector, Gandhinagar has set aside the auction sale by order dated 24th February, 1986. The orders passed by the District Collector, Gandhinagar were challenged by the petitioners in Revision before the Additional Chief Secretary [Appeals], Revenue Department but the revision applications were rejected by the revisional authority by order dated 10th August, 1988 and 2nd August, 1988 which are challenged before this Court by way of two separate petitions i.e. Special Civil Application NO.546 / 1989 and Special Civil Application No.5267 / 1993 respectively.

#. Learned advocate Mr.Mihir Joshi has submitted that according to the proposals forwarded by the Mamlatdar, Gandhinagar, highest bid of Rs.875/- has been accepted by Mamlatdar in respect of plot in question involved in Special Civil Application No.546 / 1989, whereas, highest bid of Rs.971/- has been accepted by the Mamlatdar, Gandhinagar in respect of the plot in question involved in Special Civil Application No.5267 / 1993. That after accepting the highest bid from the petitioners, proposals were sent as per the conditions of the advertisement of

the auction for confirmation to the District Collector, Gandhinagar. Thereafter, the District Collector, Gandhinagar has considered the proposals made by the Mamlatdar, Gandhinagar and without hearing the petitioners of the respective petitions, has passed the orders setting aside the auction sale by order dated 24th February, 1986. Therefore, learned advocate Mr. Joshi has submitted that by accepting the highest bid from the petitioners by the Mamlatdar, Gandhinagar, legal rights has been created in favour of the petitioners and thereafter, the District Collector, Gandhinagar has set aside the auction without giving an opportunity to the petitioners and therefore, the order passed by the District Collector in respect of the respective plots in question, is contrary to the principles of natural justice. Mr. Joshi, learned advocate has relied upon decision of the Hon'ble Division Bench of this Court rendered in case of NINABEN D. CHAUDHARY V. STATE OF GUJARAT AND ANOTHER reported in 2000 [2] GLR pg.1510.

#. Mr. S.P. Sen, learned AGP appearing on behalf of the respondents - State Authorities has submitted that the District Collector, Gandhinagar is the confirming authority for auction sale and therefore, while confirming the auction sale, exercising the powers under Section 179 of the Bombay Land Revenue Code, the Collector considered that there was no sufficient bid in respect of the auction sale and considering this fact, has set aside the auction sale and accordingly passed appropriate orders. It is also his submission that the District Collector, Gandhinagar has given sufficient reasons for setting aside the auction sale and therefore, the Government land cannot be sold to the persons when there was some collusion amongst the bidders and therefore, he submitted that the District Collector has rightly passed the order which has been confirmed by the revisional authority and therefore, no interference of this Court is called for. However, Mr. Sen, learned AGP has relied upon the decision of this Court delivered by the learned Single Judge in case of PATHUBHAI VASHRAMBHAI RAJPUT VS. GOVERNMENT OF GUJARAT THROUGH THE SECRETARY [APPEALS] AND OTHERS, reported in 2000 [4] GLR pg.3512. He submitted that in this decision, this Court has examined the powers of the Collector under Section 178 and 179 of the Bombay Land Revenue Code, 1879 [V of 1879] and ultimately, this Court has passed speaking orders giving reasons having bearing on public interest and therefore, the order passed by the Collector is upheld though this Court has remanded the matter back for reconsideration.

#. I have considered the submissions made by the learned advocates for the parties. Looking to the facts of both these cases and the facts of the case which has been relied upon by learned advocate Mr.Joshi, where the Division Bench of this Court has considered almost identical and similar facts. In a case before the Division Bench, wherein the order passed by the Collector, Gandhinagar dated 24th February, 1986 was under challenge before the learned Single Judge. Whereas, in the case on hands before this Court, the order of the Collector is also dated 24th February, 1986 under challenge. In both the orders impugned in these two petitions, the reasons given by the District Collector for setting aside the auction sale are almost similar. Therefore, considering all these aspects of the matters, the observations made by the Division Bench of this Court in para-14 of the decision, squarely relevant to the facts of the present case and therefore, the observations made in para-14 are reiterated as under :-

"14. In the backdrop of the aforesaid settled principles enunciated by the above mentioned judgment, so far as the petitioner's case is concerned, it is neither the case of the respondents nor it is pleaded that the Collector before recording the impugned order in exercise of powers conferred under the proviso to Section 179 of the Code had observed principles of natural justice. It becomes abundantly clear that the Collector has passed the order without giving an opportunity of hearing to the petitioner and therefore, the principles of natural justice have been violated so far as the petitioner is concerned. The order of the Collector being contrary to principles of natural justice is void. So also the order of revisional authority confirming nullity is also void. These two orders are, therefore, liable to be set aside. In view of these conclusions, we are of the opinion that the judgment of the learned single judge is also liable to be set aside and the appeal deserves to be accepted by allowing the petition."

#. In light of observations made by the division bench of this Court and looking to the facts of the present case in both these petitions, there was no dispute between the parties that before setting aside the auction sale, no opportunity was given to the petitioners. Therefore, in above view of the matter, according to my opinion, the order passed by the District Collector,

Gandhinagar in both these matters and the orders passed by the revisional authority confirming the order passed by the Collector, are required to be set aside.

#. In the result, both these petitions succeed and the same are allowed accordingly. The orders passed by the Collector, Gandhinagar dated 24th February, 1986 which were confirmed by the revisional authority by orders dated 10th August, 1988 and 2nd August, 1988 which are impugned in these two petitions before this Court by way of two separate petitions i.e. Special Civil Application NO.546 / 1989 and Special Civil Application No.5267 / 1993 respectively, are hereby quashed and set aside, with a direction to the District Collector, Gandhinagar to reconsider the proposal which was forwarded by the Mamlatdar, Gandhinagar in pursuance of the auction sale held on 6th December, 1985 by letter dated 10th December, 1985 and to pass appropriate orders in accordance with law on the proposal made by the Mamlatdar, Gandhinagar after giving reasonable opportunity of hearing to the petitioners, within two months from the date of receiving the copy of the writ of this order. However, ad-interim order passed in both these petitions shall continue during the pendency till fresh decision in the matters, as directed hereinabove, is taken by the District Collector, Gandhinagar. Rule is made absolute to the aforesaid extent indicated above. Direct Service is permitted.

Date : 1-11-2001 [H.K.Rathod, J.]

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